

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANTHONY BRODZKI,)
)
Plaintiff,)
)
v.) No. 4:11-CV-536-CEJ
)
STATE OF MISSOURI,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court upon the application of Anthony Brodzki for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. Therefore, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,570 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

The Complaint

Plaintiff brings this action against the State of Missouri pursuant to 42 U.S.C. § 1983. In addition, plaintiff asserts pendent state-law claims for infliction of emotional distress, assault, battery, "false imprisonment of the mind," defamation, and slander. He seeks monetary relief and unspecified injunctive relief. Plaintiff alleges that "[t]he state patrol has impeded [him], forced [him] to leave the state on recent visits . . . and told [him he] was an undocumented pedophile . . . and was not welcome in the state."

Discussion

Having carefully reviewed plaintiff's allegations, the Court concludes that his § 1983 claims are legally frivolous. The State of Missouri is not a "person" for purposes of a § 1983 action and is absolutely immune from liability under § 1983. See *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 63 (1989).

Because plaintiff's federal claim will be dismissed, all remaining pendent state claims should be dismissed, as well. See 28 U.S.C. § 1367(c)(3); *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (if federal claims are dismissed before trial, remaining state claims should also be dismissed); *Hassett v. Lemay Bank & Trust Co.*, 851 F.2d 1127, 1130 (8th Cir. 1988) (where federal claims have been dismissed,

district courts may decline jurisdiction over pendent state claims as a "matter of discretion").

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B).

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 28th day of March, 2011.



UNITED STATES DISTRICT JUDGE